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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,854	01/16/2004	Sreenivas Addagatla	042933/271712	6954
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ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER WHIPPLE, BRIAN P	
			ART UNIT	PAPER NUMBER
			2452	
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			01/21/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/758,854

Applicant(s)

ADDAGATLA ET AL.

Examiner

BRIAN P. WHIPPLE

Art Unit

2452

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,12,16-22,26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,12,16-22,26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1, 4-7, 12, 16-22, and 26-27 are pending in this application and presented for examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/12/08 has been entered.

Response to Arguments

3. Applicant's arguments with respect to claims 1, 4-7, 12, 16-22, and 26-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1, 4, 16, 19, 22, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Hsu et al. (Hsu), U.S. Patent No. 7,127,521 B2.

6. As to claim 1, Hsu discloses a first host capable of transmitting multiplexed data at a first data transfer rate (Col. 3, ln. 43-50);

a second host capable of receiving multiplexed data at a second data transfer rate (Col. 4, ln. 56-63);

a network through which data is transferred from the first host to the second host having a third data transfer rate (Col. 4, ln. 63 – Col. 5, ln. 11); and

a data throttle, wherein the data throttle limits the first data transfer rate to a throttle value that is less than or equal to the least one of the first data transfer rate, the second data transfer rate, and the third data transfer rate, and wherein the throttle value is obtained during a communication start-up process (Col. 4, ln. 63 – Col. 5, ln. 11).

The local network interface card (NIC) and remote NIC are both capable of a variety of network speeds and autonegotiation occurs based on the highest common value (a first

and second data transfer rate for each NIC, respectively). Thereafter, a network load is monitored (the rate at which data transfer occurs over the network between the local and remote NICs). Once communication ceases, autonegotiation reoccurs if the network load warrants a reduced speed. This may therefore be equated to occurring during a communication start-up process, because prior to the autonegotiation there was “a time interval without data transmission between both ends.” Autonegotiation thus breaks the communication formally and then starts it up again.

7. As to claims 4, 16, 19, 22, and 26, the claims are rejected for reasons similar to claim 1 above.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu as applied to claim 1 above, in view of what was well known in the art.

10. As to claim 12, Hsu discloses the invention substantially as in parent claim 1, but does not explicitly disclose SIP.

Official Notice (See MPEP 2144.03) is taken that Session Initiation Protocol (SIP) was a well-known protocol for creating sessions.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Hsu by using SIP as was well known in the art at the time of the invention for the purposes of using a standard protocol to create sessions in a networking environment.

11. Claims 5-7, 17-18, 20-21, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hsu as applied to claims 1, 16, 19, and 26 above, in view of Bach et al. (Bach), U.S. Patent No. 5,619,650.

12. As to claim 5, Hsu discloses the invention substantially as in parent claim 1 above, but is silent on an applications layer, a sockets layer, a transport layer, and a network layer.

However, Bach discloses an applications layer, a sockets layer, a transport layer, and a network layer (Fig. 1; Abstract, ln. 4-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Hsu by explicitly disclosing the OSI model as this is a well known standard means for communication among multiple devices (Bach: Col. 1, ln. 53-61). Additionally, it is well known to establish a sockets layer by distributing API through the session layer (Bach: Abstract, ln. 4-7) for the purposes of establishing communication across applications on different systems (Bach: Col. 2, ln. 58-61).

13. As to claim 6, the claim is rejected for the same reasons as claims 1 and 5 above.

14. As to claim 7, Hsu and Bach disclose the invention substantially as in parent claim 5, including the transport layer is comprised of a User Datagram Protocol (UDP) and the network layer is comprised of an Internet Protocol (IP) (Bach: Col. 2, ln. 43-48).

15. As to claims 17, 20, and 27, the claims are rejected for similar reasons to claim 6 above.

16. As to claims 18 and 21, the claims are rejected for similar reasons to claim 7 above.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the Notice of References Cited (PTO-892).

In particular: Gnutella Forums, "A few things to consider while configuring Limewire for optimal performance...", 7/28/04, Page 3-5. LimeWire was known to include the option to set a maximum upload speed. In other words, the uploader of a shared file (i.e., "seeder") would upload the file to a downloaded (i.e., "leecher"). While the seeder may be capable of a certain upload speed that the leecher is also capable of downloading the file at, the seeder may not desire that all available upload bandwidth be consumed by the uploading of shared files. Therefore, a maximum upload speed may be set. This reads on claim 1, as the first and second hosts would be capable of sharing files through a network at a certain speed, but the transfer may be limited to a third rate based on the configured settings.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (9:30 AM to 6:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple
/B. P. W./
Examiner, Art Unit 2452
1/16/09

/Kenny S Lin/
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